

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| NBC 7 SAN DIEGO, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 19-1146 (RBW) |
| |) | |
| UNITED STATES DEPARTMENT |) | |
| OF HOMELAND SECURITY, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| |) | |

JOINT STATUS REPORT

Pursuant to the Court’s Minute Order of August 29, 2019, the Parties hereby submit this status report advising the Court of the status of this Freedom of Information Act (“FOIA”) case. Accordingly, the Parties state as follows:

1. This case concerns five FOIA requests submitted by Plaintiffs NBC 7 San Diego, Tom Jones, and the Reporters Committee for Freedom of the Press (“RCFP”) (collectively, “Plaintiffs”), seeking records from the U.S. Department of Homeland Security (“DHS”) and its component-agencies, Immigration and Customs Enforcement (“ICE”), U.S. Customs and Border Protection (“CBP”), and U.S. Citizenship and Immigration Services (“USCIS”) (collectively, “Defendants”). *See* Compl., ECF No. 1, at ¶¶ 16–17, 23–28. RCFP’s FOIA requests each consist of 12 subparts. *See, e.g.*, ECF No. 1-9 at 5-6.

2. Defendants filed their answer in this case on June 11, 2019, *see* ECF No. 9. Defendants have not completed their responses to Plaintiffs' FOIA requests.

CBP

3. Defendant CBP is currently conducting a search for records potentially responsive to Plaintiffs' requests and has begun processing records identified in CBP's preliminary searches.

4. CBP has conducted a preliminary search for records responsive to items 3, 4, 5, 6, and 8 of the RCFP request and is reviewing the results to determine if additional searches are necessary. The Parties agree that CBP will complete these searches by December 2, 2019; however, CBP reserves its right to supplement these search efforts as necessary.

5. Items 1, 2, 3, 4, 7, and 11 of the RCFP request each seek records relating to "the application(s)/database(s) described in the NBC 7 article and accompanying screenshots/documents" and include a reference to Exhibits B and C to the RCFP request. The Parties plan to continue to meet and confer on these portions of the RCFP request to CBP.

- a. CBP's additional statement: As noted in the Parties' August 28, 2019 Joint Status Report (ECF No. 13), it is CBP's position that no such "database(s)/application(s)" exist and, therefore, no records responsive to items 1, 2, 3, 4, 7, and 11 exist.
- b. Plaintiffs' additional statement: Plaintiffs disagree with and dispute CBP's position that the database(s)/application(s) described in NBC 7 San Diego's reporting do not exist. On October 24, 2019, CBP, through counsel, provided Plaintiffs with a written statement explaining the basis for CBP's position that the "database(s)/application(s)" referenced in RCFP's FOIA requests do not exist. CBP's position states, *inter alia*, that "[w]hile the NBC 7 article suggests that the information described in the article is drawn directly from an underlying database or application, this is not accurate. The information described in the NBC article

and the accompanying ‘screenshots’ appear to be drawn from a single, multipage electronic document.” Given agencies’ obligations to liberally construe FOIA requests, *see, e.g., Truitt v. Dep’t of State*, 897 F.2d 540 (D.C. Cir. 1990), and that RCFP’s FOIA request to CBP included a wealth of detail concerning the records sought, including screenshots of the records referenced in NBC 7’s reporting, Plaintiffs object to CBP’s narrow parsing of RCFP’s request. At CBP’s request, Plaintiffs provided amended search terms for items 1 and 11 of the RCFP request to CBP on August 28, 2019. It was Plaintiffs’ understanding that CBP had agreed to conduct a search using those terms. Plaintiffs will continue to meet and confer with CBP’s counsel concerning this issue.

6. As stated in the Parties’ July 22, 2019 Joint Status Report (ECF No. 12), CBP tasked its Office of Information and Technology with conducting an electronic keyword search implementing the email portions of the NBC 7 San Diego request and items 9 and 10 of the RCFP request. The electronic keyword search covering the email portions of the NBC 7 San Diego request and item 9 of the RCFP request returned approximately 1,900 email records.

7. The electronic keyword search covering item 10 of the RCFP request returned over 413,000 email records. On October 18, 2019, CBP, through counsel, advised Plaintiffs of the number of records and suggested narrowing the scope of the keyword search given the impracticability of processing that volume of records in a reasonable amount of time. The Parties will continue to meet and confer regarding items 10 and 12 of the RCFP request.

8. As stated in the Parties’ August 28, 2019 Joint Status Report (ECF No. 13), CBP has also completed an initial search for non-email records responsive to the NBC 7 San Diego request.

9. The Parties have agreed that CBP will make rolling monthly productions to Plaintiffs and process records at an average rate of 500 pages per month with CBP's productions to begin by November 25, 2019.

ICE

10. Defendant ICE has completed its searches, with the exception of one program office. To date, ICE has located approximately 5000 pages of records that are potentially responsive to Plaintiffs' requests. ICE completed its first two productions to Plaintiffs in August and September, and has referred a total of 491 pages of records to CBP for direct reply to Plaintiffs. ICE will continue to review and process potentially responsive records at a rate of approximately 500 pages per month.

USCIS

11. Defendant USCIS, after conferring with Plaintiffs, conducted a limited search for items 10 and 12 of the RCFP request. Using a limited search scope, USCIS located approximately 2,500 pages from item 10 and just over 180,000 for item 12. USCIS will process the approximately 2,500 pages of records responsive to item 10 of the RCFP request at a rate of no less than 500 pages per month, with the first production to be made no later than December 2, 2019. The Parties will continue to meet and confer regarding item 12 of the RCFP request.

DHS

12. As noted in the Parties' last status report (*see* ECF No. 13), Defendant DHS has referred Plaintiff NBC 7 San Diego's FOIA request to ICE and CBP for direct response and has closed out that request. In addition, DHS has conferred with Plaintiffs about DHS's proposal to limit its

remaining search to specific custodians at DHS (*i.e.*, DHS's Office of the Secretary, Office of the Deputy Secretary, and the Office of Strategy, Policy, and Plans).

- a. Defendants' statement: DHS has now completed its formulation of its search with DHS's Office of the Chief Information Officer ("OCIO") and will begin the search within the next several days. DHS will confer with Plaintiffs regarding the results of its search efforts. DHS will endeavor to complete the search within 30 days and will confer with Plaintiffs regarding the results of its search efforts.
- b. Plaintiffs' statement: Because DHS does not identify any date by which it will complete its search for records responsive to the RCFP request, Plaintiff respectfully requests that the Court order DHS to complete its search by November 25, 2019.

13. The Parties will continue to confer regarding Defendants' searches for potentially responsive records and the processing of responsive records for potential release to Plaintiffs.

14. In light of the above, the Parties respectfully propose that the Court permit the Parties to file another status report by December 13, 2019, further advising the Court regarding the Parties' progress.

Dated: October 25, 2019

Respectfully Submitted,

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